Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-198

SUPREME COURT OF VIRGINIA, ET AL.,

Appellants,

v.

CONSUMERS UNION OF THE UNITED STATES, INC., ET AL.,

Appellees.

On Appeal from the United States District Court for the Eastern District of Virginia

JURISDICTIONAL STATEMENT FILED AUGUST 6, 1979
PROBABLE JURISDICTION NOTED OCTOBER 15, 1979

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APPENDIX

OPINION AND ORDER OF THE DISTRICT COURT

Opinion and Order of the District Court entered May 8, 1979, is reported as *Consumers Union of the United States* v. *Virginia State Bar,* 470 F.Supp. 1055 (E.D. Va. 1979), and is also reproduced in the Appendix to the Jurisdictional Statement.

DOCKET ENTRIES

February 27, 1975—Complaint filed. Summonses issued. Application for convening of Three-Judge Court, filed, with supporting memorandum.

March 21, 1975—Order extending the time for filing responsive pleadings by defts. upto April 3, 1975. Ent. March 21, 1975, filed, RRM., copies mailed.

March 25, 1975—Order substituting Honorable Lawrence W. I'Anson for Honorable Harold F. Snead, filed. Ent. March 25, 1975 RRM. Copies mailed.

March 25, 1975—Notification and request for designation to three judge court, filed.

March 26, 1975—Marshals return on summons as to all defendants listed executed and filed.

April 3, 1975—Deft's. #2., #3., #4., #5., #6. answer to complaint, no jury demanded, filed.

April 3, 1975—Deft. ABA's answer to complaint, no jury demanded, filed.

April 3, 1975—Pltf's. motion for summary judgment with supporting memorandum of points & authorities, filed.

April 3, 1975—Affidavit of Monroe H. Freedman, filed.

April 3, 1975—Affidavit of Marsha N. Cohen, filed.

April 3, 1975—Affidavit of Joel D. Joseph, filed.

April 3, 1975—Affidavit of James G. Frierson, filed.

April 3, 1975—Affidavit of Sandra Dement, filed.

April 7, 1975—Order soliciting response to pltf's. motion for summary judgment. Deft. may reply within Fifteen (15) days of this date. Pltf. may, within Five (5) days thereafter, submit any matters in rebuttal. Ent April 7, 1975, filed, RRM., copies mailed.

April 11, 1975—Motion to stay proceedings with respect to pltf's. motion for summary judgment, filed.

April 11, 1975—Motion to abstain, filed by defts.

April 18, 1975—Designation of Three-Judge panel of: Ho. Robert R. Merhige, Jr., John D. Butzner, Jr., & D. Dortch Warriner, by Chief Judge Clement F. Haynesworth, filed. Copies mailed counsel of record.

April 21, 1975—Order setting briefing schedule re: mot to abstain ent April 21, 1975, RRM, Jr., filed.

April 21, 1975—Order allowing parties 15 days to file authorities; ent April 21, 1975, RRM, Jr., filed. Copies to counsel. Copies to Judges.

April 21, 1975—Pre-trial order setting cut-off dates; exhibits to be filed by September 2, 1975; pltfs-opening brief due August 15, 1975; defts' September 15, 1975; pltfs' reply September 22, 1975; hearing September 25, 1975, 10 am ent April 21, 1975, RRM, Jr., filed. Copies to counsel & judges.

April 28, 1975—Memorandum in support of deft's. motion for abstention, filed.

May 5, 1975—Memorandum in Opposition to Defts' Motion for Abstention filed by pltfs. Copies delivered to Judges by counsel for pltfs.

May 13, 1975—Defts #2-6 Reply Memorandum in Support of Defts' Motion to Abstain, filed.

May 15, 1975—Pltfs' motion for leave to file supplemental memorandum, filed.

May 15, 1975—Pltfs' Supplemental Memorandum in opposition to defts' motion to abstain, filed.

June 3, 1975—Deft #1's notice to take disposition of Edward L. Wright on June 16, 1975, filed.

June 3, 1975—Deft #1's notice to take deposition of Walter P. Armstrong, Jr., filed.

June 3, 1975—Deft #1's notice to take deposition of John Eckler on June 17, 1975, filed.

June 3, 1975—Deft #1's notice to take deposition of C. Russell Twist on June 23, 1975, filed.

June 3, 1975—Deft #1's notice to take deposition of Monroe H. Freedman on June 30, 1975, filed.

June 13, 1975—In open court: Merhige, J. Halasz, OCR Appearances: Parties by counsel. Matter heard as to the awarding of travel expenses to pltfs' counsel for the taking of depositions in Tennessee. Matter taken under advisement by the Court. (10 Mins)

June 16, 1975—Defts' notice to take deposition of N. Samuel Clifton on June 24, 1975, filed.

June 16, 1975—Request for admissions as to defts. #2-6, filed by pltfs.

June 16, 1975—Request for admissions as to ABA, filed by pltfs.

June 19, 1975—Notice to take deposition of Monroe Freedman, filed by pltf.

June 30, 1975—Notice to take deposition of Wesley J. Liebler, filed by pltf.

July 2, 1975—Response to requests for admissions, filed by defts.

July 2, 1975—Answers to requests for admissions, filed by ABA.

July 8, 1975—Order amending designation of three-judge court; vacating designation of Judge Butzner & designating Hon. Albert V. Bryan, Sr.; ent July 2, 1975, CFH, Jr., filed. Copies mailed counsel of record.

July 10, 1975—Motion for an order directing answers within five (5) days under F.R.C.P. Rule 36(a) and for expedited consideration of this motion, filed by pltfs.

July 11, 1975—Deposition of Walter P. Armstrong, Jr., received.

July 11, 1975—Deposition of Edward L. Wright taken on behalf of defts., received.

July 11, 1975—Pltf.'s request for admissions, filed (second request).

July 11, 1975—Pltf.'s second request for admissions as to deft. ABA, filed.

July 14, 1975—Deposition of John Eckler Rec'd.

July 14, 1975—Pltf's. third request for admissions as to deft. ABA, filed.

July 14, 1975—Pltf's. third request for admissions as to defts. #2-6, filed.

July 15, 1975—Answers to second request for admissions, filed by ABA, copies mailed.

July 15, 1975—Order directing that the answer to pltf's. second request for admissions propounded upon defts be completed and served upon pltfs within five days of the date of this order. Ent. July 15, 1975, filed, DDW, copies mailed.

July 18, 1975—Pltf's Motion & Memorandum to Determine Sufficiency of Deft's Request for Admiss.

July 22, 1975—Response to second request for admissions, filed.

July 24, 1975—Motion to Determine the Sufficiency of Deft. VA State Bar's Answer to Request for Admissions Under F.R.Civ.P. Rule 36(a), and for Expedited Consideration of this Motion, filed by Pltf., filed.

July 24, 1975—Memorandum of Points & Authorities in Support of Motion to Determine the Sufficiency of Deft. VA State Bar's Answers to Request for Admissions and for Expedited Consideration of this Motion, filed by Pltf., filed.

July 25, 1975—Ordered that certain statements submitted to Deft. for admission in Pltfs' Second Request for Admissions be deemed admitted or that Deft. provide amended answers to said Second Request for Admissions, the Court is of the opinion that a decision on Pltfs' Motion should be deferred until further Order of Court, provided Pltfs' Second Request for Admissions will not be

subjected to August 15, 1975 deadline for completion of discovery, further that time fixed for filing of briefs is not modified, filed. Copies mailed.

July 29, 1975—Deposition of Wesley J. Liebeler, rec'd. Pages 1 thru 161. Taken on behalf of Pltf.

July 29, 1975—Deposition of Morton H. Freedman taken on behalf of the Pltfs. pages 1 thru 108, rec'd.

July 30, 1975—Response on Behalf of American Bar Association to Third Request for Admissions, filed.

July 30, 1975—Response on Behalf of American Bar Association to Pltfs' Motion to Determine Sufficiency, filed.

July 31, 1975—Order admitting certain of statements submitted to deft. Va. State Bar; deferring decision on pltf's motion until further order; pltfs' 2nd Request for Admissions not subjected to August 15, 1975 deadline; briefing schedule not modified; ent July 31, 1975, AVB, Sr. for The Court, filed. Copies to counsel & Judges.

August 5, 1975—Deposition of N. Samuel Clifton taken on behalf of Deft pursuant to Notice and Agreement of Counsel, received.

August 5, 1975—Deposition of C. Russell Twist taken on behalf of Deft pursuant to Notice and Agreement of Counsel, received.

August 6, 1975—Response on behalf of Virginia State Bar, et al., Pltfs' motion to determine sufficiency, filed.

August 6, 1975—Response of Virginia State Bar, et al., third request for admissions, filed.

August 13, 1975—Pltfs and Defts stipulate facts, filed.

August 14, 1975—Reply to Defts' Responses to Pltfs' Motion to Determine Sufficiency, filed.

August 14, 1975—Motion to Determine the Sufficiency of Defts' Answers to Pltfs' Third Request for Admissions and for Consolidation and Expedited Consideration of this Motion, filed.

August 14, 1975—Memorandum of Points and Authorities in Support of Motion to Determine the Sufficiency of Defts' Answers to Pltfs' Third Request for Admissions and for Consolidation and Expedited Consideration of this Motion, filed.

August 14, 1975—Affidavit of Richard J. Byrd, filed.

August 14, 1975—Certificate of Service certifying that Motion, Memorandum of Points & Authorities and Affidavit & proposed Order were served on counsel for Defts., Judge RRM, Judge DDW & Judge Bryan, filed.

August 15, 1975—Pltfs' Opening Brief on the Merits, filed.

August 19, 1975—Objections on behalf of ABA to evidence presented in depositions and Motion to strike, filed.

September 2, 1975—Deft., ABA's List of Exhibits filed. Copies to Judges.

September 2, 1975—Pltfs' List of Exh. (with bk of exh. recd) filed.

September 2, 1975—Pltfs' Response to deft. ABA's Obj. to deposition evidence & Motion to Strike filed.

September 2, 1975—Pltfs' Objection to certain evidence filed.

September 2, 1975—List of Exhibits (exh. attached) filed by State defts.

September 3, 1975—Motion for continuance with notice of hrng September 5, 1975, 8:30 am filed by deft., ABA.

September 3, 1975—Notice of Motion that on the 5th day of Sept., 1975, at 8:30, the Motion for Continuance will be brought on for hearing before this court, filed.

September 3, 1975—Motion for Continuance filed by Defts.

September 5, 1975—Pltfs' Opposition to Defts' Motion for Continuance, filed.

September 8, 1975—Pltfs' Supplemental Memorandum in Opposition to Defts' Motion for Continuance, filed.

September 8, 1975—Order granting Pltfs' motion for a

continuance from September 25, 1975 to be reset at 10 a.m. on September 25, 1975 for trial; Court will set a definite trial date on September 25, 1975; Pltf's will be given opportunity to file supplemental brief & additional time to reply to both primary & supplemental briefs will be granted Defts, Entered by RRM on September 8, 1975 & filed. Copies mailed as directed.

September 25, 1975—In Open Court: Merhige, Warriner, Judges Girard, OCR Appearances: Parties by counsel. Matter came on for setting of new hearing date. Court amended Order of September 8, 1975 from "Motion of Pltfs" to "Motion of Defts". New trial date set for March 25, 1976 at 10 A.M. Pltfs to file Supplemental brief by March 1, 1976; defts to file Reply Brief by March 15, 1976; Rebuttal brief by Pltfs to be filed by March 22, 1976. Proposed findings of facts and conclusions of law to be filed by March 23, 1976. Order to enter.

September 25, 1975—Ordered that unresolved issues will be tried on March 25, 1976 at 10 a.m.; Pltfs shall file supplemental briefs on or before March 1, 1976 & Defts to reply on or before March 15, 1975 with leave granted Pltfs to file such rebuttal brief on or before March 22, 1976; parties to file proposed findings of fact & conclusions of law on or before March 23, 1976 & counsel for Defts requested to keep Pltfs advised of all actions taken by Defts or committees which would have bearing on action, Entered by RRM on September 25, 1975 & filed. Copies mailed as directed.

February 4, 1976—Pltfs' Motion for Modification of Briefing Schedule, filed.

February 6, 1976—Opposition to pltfs' motion for modification of briefing schedule filed by dft., ABA.

February 6, 1976—Order modifying briefing schedule; pltfs to serve suppl. brief by February 25, 1976, defts to serve

reply by March 1, 1976 ent February 6, 1976, RRM, Jr., filed. Copies mailed counsel and judges.

February 6, 1976—Report on progress made by American Bar Association in consideration of possible amendments to Code of Professional Responsibility, filed.

February 9, 1976—Defts' Response to motion for modification of briefing schedule filed.

February 10, 1976—Deft American Bar Association's Motion for Modification of Modied Briefing Schedule, filed.

February 10, 1976—Order that the briefing schedules as presented by orders of September 25, 1975, and February 6, 1976, shall be modified to require Defts to serve their main brief on or before March 8, 1976; otherwise, said briefing schedule shall remain unchanged, ent. February 10, 1976, RRM, filed. Copies sent to all counsel of record.

February 11, 1976—Motion of Deft Va. State Bar for Modification of Modified Briefing Schedule, filed.

February 13, 1976—Pltfs' Opposition to Deft American Bar's Motion for Modification of Modified Briefing Schedule, filed.

February 25, 1976—Pltfs' supplemental memorandum, filed.

February 27, 1976—Motion for continuance of March 25, 1976 hrng filed by State Bar & Supreme Court defts with notice of hrng March 1, 1976, 10 a.m.

February 27, 1976—Pltfs' Opposition to Deft State Bar's Motion for Continuance, filed.

March 1, 1976—In Open Court: Merhige, J. Halasz, OCR Appearances: Parties by counsel. Matter came on for hearing on Deft. Va. State Bar etal's motion for a continuance. Motion heard; granted. Case cont'd to May 4, 1976 at 10:15 a.m.

March 1, 1976—Ordered that (a) Deft. ABA serve

amended answers to Pltfs' second request for admissions within 10 days of this date; (b) Deft. ABA's response to request for admissions 7, 27, 28 & 29 of Pltfs' second request for admissions is sufficient; (c) Deft. ABA serve amended answer to Pltfs' second request for admissions within 10 days as to admission number 15 insofar as it relates to Sandra DeMent's opinion but no response required as to alleged expertise in filed; further Ordered (a) Deft. VA State Bar & named individual Defts serve amended answers to Pltfs' second request for admissions within 10 days as to admissions 2, 5, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 22, 30, 32, 33 and 34; (b) Deft. VA State Bar & named individual Defts. serve an amended answer to Pltfs' second request for admissions as to admission request 15; further Ordered that all Defts serve an amended answer within 10 days of this Order as to Pltfs' third request for admissions; further Ordered that Defts' objection to evidence presented in depositions & motion to strike be & same hereby Denied, Entered by RRMjr on March 1, 1976 & filed. Copies mailed as directed.

March 2, 1976—Order continuing case until May 4, 1976 at 10:15 a.m.; deft's to file briefs within 10 days after Supreme Co. of Va. takes final action or April 23, 1976, whichever date comes first, with leave to pltfs to respond by noon, May 3, 1976; all parties to file proposed findings of fact and conclusions of law by 9:00 a.m., May 4, 1976, ent. March 2, 1976, RRMjr, filed. Copies mailed.

March 9, 1976—Amended Answer on behalf of the American Bar Association to Pltfs' Second and Third Request for Admissions, filed.

March 10, 1976—Order continuing hearing to May 18, 1976, 11:30 am ent March 10, 1976, RRM, Jr., filed. Copies mailed counsel and judges.

March 10, 1976—Order that pltfs' motion for expenses be taken under advisement ent March 10, 1976, RRM, Jr., filed. Copies to counsel and judges.

March 11, 1976—Amended Answer on behalf of State Defts to Pltfs' Second and Third Requests for Admissions, filed.

April 1, 1976—Deft's Notice to Take deposition of Michael Franck, Esq. on April 8, 1976, filed.

April 5, 1976—Notice to take deposition of Goeffrey C. Hazard, April 15, 1976, filed by dft. ABA.

April 12, 1976—Pltfs' motion for clarification of scope of additional discovery, Motion to compel immediate production of document, & for expedited consideration of said motions, filed.

April 12, 1976—Pltfs' Memorandum in support of motions for clarification of scope of additional discovery, to compel immediate production of document, & for expedited consideration, filed.

April 13, 1976—Objection on behalf of American Bar Association to Pltfs' Motion for Clarification of Scope of Depositions and Motion to Compel Immediate Production of Document, filed.

April 14, 1976—Deft's Notice to Take Deposition of Rothwell Lillard on April 14, 1976, filed.

April 14, 1976—Deposition of Michael Franck on April 8, 1976, rec'd.

April 15, 1976—Ordered that depositions noticed by defts for April 1976 are limited to matters pertinent to amendments of Deft's Code of Professional Responsibility of February 1976; further Ordered that within 10 days Deft. ABA to submit to counsel for Pltfs copy of transcript of proceedings conducted at ABA's Feb. 1976 meeting & no further discovery shall be permitted without

express approval of Court Entered by RRMjr on April 15, 1976 & filed. Copies mailed as directed.

April 19, 1976—Deposition of Rothwell J. Lillard taken April 14, 1976 on behalf of deft, rec'd.

April 20, 1976—Exhibits #1 & 2 to be attached to deposition of Mr. Rothwell J. Lillard taken on April 14, 1976, rec'd.

April 21, 1976—Pltfs' motion to modify procedures for filing of defts' opposition briefs, filed with Memorandum in support.

April 22, 1976—Motion by deft. ABA to allow parties to file additional proposed exh by May 4, 1976 & to be allowed until May 18, 1976 to file findings of fact & proposed conclusions of law filed.

April 23, 1976—Notice of appearance by John F. Rick, AAG as co-counsel for Defts, filed.

April 23, 1976—Defts VA State Bar & Supreme Court of VA, filed.

April 23, 1976—Deft ABA's Brief on Merits, filed.

April 27, 1976—Deft ABA's Opposition to Pltfs' Objections to Certain Deposition Evidence and Motion to Strike, filed.

April 29, 1976—Deposition of Geoffrey C. Hazard taken April 15, 1976 on behalf of defts, rec'd.

April 29, 1976—Order that all parties file any additional proposed exhibits on or before May 4, 1976, and all parties file their respective proposed findings of facts and conclusions of law by 9:00 a.m., May 14, 1976 instead of May 4, 1976, ent. April 29, 1976, RRM, filed. Copies mailed as directed.

April 30, 1976—Pltfs' Objections to certain deposition evidence, and motion to strike, filed.

May 3, 1976—Pltfs' supplemental list of exhibits, filed.

May 3, 1976—Pltfs' motion for additional time to file reply brief & memorandum in support thereof, filed.

May 3, 1976—Deft ABA's objection to pltfs' motion for additional time to file reply brief, filed.

May 4, 1976—Ordered that Pltfs may serve reply brief on Defts no later than May 14, 1976 Entered by RRMjr on May 4, 1976 & filed. Copies mailed to all counsel of record.

May 4, 1976—Defts' Response to Pltfs' Motion for Additional Time to File Reply Brief, filed.

May 4, 1976—Deft ABA's Additional Proposed Exhibits with Exhibit 16 attached.

May 4, 1976—Defts Va. St. Bar, et al's, Supplemental List of Exhibits, filed.

May 11, 1976—Deft. ABA's objections to Pltfs' exhibits, filed.

May 11, 1976—Defts Va. State Bar, et al's Objection to Pltfs' Exhibits, filed.

May 13, 1976—Vs. State Bar's Proposed Findings of Fact and Conclusions of Law, filed.

May 14, 1976—Findings of Fact and Conclusions of Law on behalf of the American Bar Association, filed.

May 14, 1976—Pltfs' Reply to ABA's Objections to Pltfs' Exhibits, filed.

May 14, 1976—Pltfs' Proposed Findings of Fact and Conclusions of Law, filed.

May 14, 1976—Pltfs' Reply Brief with attachments, filed.

May 18, 1976—In Open Court: Bryan, Sr., Merhige and Warriner, Judges. Halasz, OCR Matter came on for hearing of oral arguments on the merits. Arguments of parties heard. Case taken under advisement by the Court. (1 Hr. 18 Mins.)

May 26, 1976—Pltfs' Motion for Leave to File Supplemental Memorandum, filed.

May 28, 1976—Pltfs' Motion to Lodge Document with the Court, filed.

May 28, 1976—Order granting leave for pltfs' to filed Supplemental Memorandum within 10 days, defts may respond within 10 days, ent. May 28, 1976, RRMjr, filed. Copies mailed.

May 28 ,1976—Pltfs' Supplemental Memorandum, filed.

June 3, 1976—Supplemental Memorandum on behalf of The American Bar Association, filed.

June 24, 1976—Plaintiff's application for reimbursement pursuant to local rule 21, filed.

June 24, 1976—Plaintiff's motion for leave to file supplemental memorandum, filed.

June 24, 1976—Deft ABA's Objection to pltfs' application for reimbursement pursuant to Local Rule 21 on behalf of ABA with Memorandum in Support, filed.

July 7, 1976—Order granting pltfs' motion to file suppl memorandum; dfts allowed 10 days to respond; denying motion for reimbursement ent July 7, 1976, RRM, Jr., filed. Copies mailed.

July 7, 1976—Pltfs' Suppl. Memorandum filed.

August 19, 1976—Pltfs' Motion for Leave to File Supplemental Memorandum, filed.

November 15, 1976—Pltfs' Supplemental Memorandum, filed.

December 17, 1976—Opinion of RRMjr, Opinion of DDW concurring in part & dissenting in part & opinion of AVB dissenting, filed.

December 17, 1976—Ordered ABA is Dismissed; further Ordered prayers of State Defts granted with exception aforesaid; publication described in complaint as amended & proposed by Pltfs is declared valid with said exception;

Defts, successors, agents & attorneys be permanently enjoined & restrained from enforcement of rules & regulations issued by said Defts & described in complaint in respect to advertising by lawyers in VA; counsel for respective parties directed to meet & confer in effort to reach amicable adjustment of issue of counsel fees; counsel for Pltfs directed to apply to Court within 30 days of this date for day certain for purpose of all counsel & resident judges meeting & setting further schedules as may be requisite, Entered by RRMjr, DDW & AVB on December 17, 1976 & filed. Copies mailed to all counsel of record.

December 28, 1976—Ordered RRMjr's opinion amended, Entered by RRMjr on December 28, 1976 & filed. Copies mailed to all counsel of record.

January 5, 1977—Notice of appeal filed by plaintiff.

January 7, 1977—Copy of notice of appeal & docket entries sent to Clerk, U.S. Supreme Court.

January 25, 1977—VA State Bar, et al's Notice of Cross Appeal, filed.

January 26, 1977—Copy of notice of cross-appeal sent to Clerk, U.S. Supreme Court.

Mar. 1, 1977—Order directing transmittal or record to U.S. Supreme Court, requesting return of records on finality of action, ent'd, filed.

March 2, 1977—Record on appeal, XIII vols, mailed Clerk, U.S. Supreme Court, Certified, (3 vols pleadings, 1 vol Exhibits, 9 vols depositions).

August 2, 1977—Record in XIII Vols. (3 Vols. pleadings, 1 vol Exhibits, 9 vols depositions) rec'd from the Clerk, Supreme Court of the United States.

August 2, 1977—Certified Copy of Judgment of Supreme Court of the U.S. remanding this action to the U.S.D.C. for further consideration, filed.

November 9, 1977—Order that counsel to confer to agree upon appropriate decree in accord with U. S. Supreme Court mandate; if on agreement counsel to meet in conference room at Court on December 3, 1977 at 9:00 a.m., ent. November 9, 1977, RRMjr, filed. Copies mailed.

May 15, 1978—Ordered Deft. VA State Bar respond within 20 days to Pltfs' memorandum in support of Motion for an award of attorney's fees & costs; Pltf. shall file rebuttal memorandum within 10 days after receipt of Deft's memorandum; hearing on all outstanding issues will be conducted before members of three-judge court herein at 9 a.m. on July 20, 1978 at Alex. Division, Entered by RRMjr on May 15, 1978 & filed. Copies mailed to all counsel of record & Judges AVBsr RRMjr & DDW.

May 15, 1978—Pltfs' Motion for A Judgment On The Merits & Injunction Enjoining & Restraining Defts' From Interfering With Pltfs' & Pltfs' Members Constitutional Rights, filed.

May 15, 1978—Pltfs' Memorandum in Support of Pltfs' Motion for Judgment on the Merits with Attachments, filed.

May 15, 1978—Pltfs' Motion for An Order Declaring Defts' Liability For Attorneys' Fees & Costs, filed.

May 15, 1978—Pltfs' Memorandum In Support of Pltfs' Motion for An Award of Attorneys' Fees & Costs, filed.

June 5, 1978—Deft Va. State Bar's Response to Motion for an Order Declaring Defts' Liability for Fees and Costs, filed with Brief.

June 5, 1978—Deft Va. State Bar's Response to Motion for Judgment on the Merits, filed.

June 12, 1978—Pltfs' Motion for Extension of Time to File Rebuttal Memorandum, filed.

June 14, 1978—Ordered that pltf's shall have to and including July 3, 1978 to file their rebuttal Memorandum. Ent June 14, 1978, RRM,jr., and filed. Copies mailed.

June 14, 1978—Defts' Response to Motion for Extension of Time to File Rebuttal Memorandum filed.

June 30, 1978—Pltfs' Reply to Defts' Response to Motion for An Order Declaring Defts' Liability For Fees & Costs, filed.

July 20, 1978—In Open Court (at Alexandria): Bryan, Sr., Merhige, & Warriner, Judges. Appearances: Parties by Counsel. Matter came on for Hearing of Arguments. Pltfs' Motion for a Judgment on the merits and injunction enjoining and restraining defts and pltfs' motion for an order declaring defts' liability for attys' fees argued; motions taken under advisement by the court. (1 Hr. 5 Mins.)

August 17, 1978—Order that complaint dismissed with prejudice as to deft American Bar Association, ent. August 17, 1978, RRMjr, filed. Copies mailed.

December 21, 1978—Pltf's Motion for Expedited Consideration of Pltfs' Motion for a Judgment on the Merits and Permanent Injunction, filed.

December 21, 1978—Pltfs' Memo. in Support of Motion for Expedited Consideration, filed.

December 29, 1978—Defts' Response to Pltfs' Motion for Expedited Consideration, filed.

January 10, 1979—Pltfs' Reply Memo. in Support of Motion for Expedited Consideration, filed.

May 8, 1979—Ordered that the publication described in pltfs' complaint, as amended, is declared valid and constitutionally protected; Va. Code of Professional Responsibility Disciplinary Rule 2-102(A) (6) is declared unconstitutional on its face; the defts and all acting in concert therewith are enjoined from enforcement of Va.

Code of Professional Responsibility Disciplinary Rule 2-102(A) (6); the Supreme Court of Va. and the Hon. Lawrence W. I'Anson, are ordered to pay pltfs their costs and attorneys fees; Counsel are directed to meet and confer in an effort to reach agreement on the amount of attorneys fees to be paid. In the event parties are unsuccessful in resolving issue, counsel for pltfs are directed to file within 30 days a motion for an award of a specified amount for costs and attorneys fees. Defts may within 20 days thereafter respond to such a motion, after which pltfs shall have 10 days to replt. Ent May 8, 1979, by AVB, RRMjr, and DDW, filed. Copies mailed.

May 8, 1979—Memorandum Opinion of RRM, jr, filed.

May 8, 1979—Memorandum Opinion of DDW, Dissenting in Part and Concurring in Part, filed.

May 8, 1979—Letter of Albert V. Bryan, Sr., affirming decision of RRMjr, filed.

May 23, 1979—Defts' Petition for Rehearing, filed.

May 23, 1979—Defts' Petition for Extension of Time to Resolve Amount of Attorneys Fees, filed.

May 23, 1979—Defts' Memo in Support of Petition for Rehearing, filed.

May 23, 1979—Defts' Representation of Testimony to be Offered, filed.

May 30, 1979—Order that motions of defts for rehearing and extension of time to resolve amount of attys fees be Denied, ent. May 30, 1979, RRMJr, filed. Copies mailed.

June 6, 1979—Pltf's motion for extension to file motion for costs & fees filed.

June 7, 1979—Order, that the time allowed for counsel for pltfs' to file with this court a motion for an award of a specified amount for costs and attorneys fees accompanied by supporting data, is extended through June 18, 1979. Defts to respond within 20 days; pltfs' to reply 10

days thereafter. Ent. by RRM,JR. on June 7, 1979 & filed. Copies mailed.

June 7, 1979—Defts', Hon. Justice I'Anson & the Supreme Court of Va., Notice of Appeal, filed. ($5.00 fee paid.)

June 7, 1979—Pltfs' Notice of Cross Appeal, filed.

June 18, 1979—Pltfs' Motion for an Award of Fees and Costs, filed.

June 18, 1979—Pltfs' Memo in Support of Motion for Award of Fees, filed.

July 10, 1979—Deft's Response to Motion for Attorney's Fees, plus exhibits, filed.

July 16, 1979—Defts. Motion for Leave to File Supplemental Memorandum on Issue of Attorney's Fees, filed.

July 16, 1979—Defts. Supplemental Memorandum on Attorneys' Fees, with attachment, filed.

August 3, 1979—Pltfs' Motion for an Extension of Time, filed.

August 6, 1979—Ordered that Defts' Supplemental Memorandum on Attorney's Fees lodged with Court on July 16, 1979, be filed; pltfs may respond on or before August 31, 1979, ent RRMjr, August 6, 1979, filed. Copies mailed.

August 15, 1979—Pltfs' Reply to Defts' Supplemental Memorandum & To Defts' Response to Motion for Attorney's fees, filed.

August 20, 1979—Order directing Clerk to transmit entire record to U.S. Supreme Court, and that upon finality of action in Supreme Court, requests that record be returned to this office, ent'd, RRM, August 20, 1979.

August 20, 1979—Record on appeal, XIV vols, del'd to Clerk, U.S. Supreme Court.

COMPLAINT (MINUS ATTACHMENTS)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

CONSUMERS UNION OF UNITED STATES, INC.
256 Washington Street
Mount Vernon, New York 10550
VIRGINIA CITIZENS CONSUMER COUNCIL
P. O. Box 777
Springfield, Virginia 22150

Plaintiffs,

v.

AMERICAN BAR ASSOCIATION
1155 East 60th Street
Chicago, Illinois 60637
VIRGINIA STATE BAR
5th and Franklin Streets
Richmond, Virginia 23219
HOWARD W. DOBBINS, individually and in his capacity
as President of the Virginia State Bar
P. O. Box 242
Richmond, Virginia 23202
ROTHWELL J. LILLARD, individually and in his capacity
as Chairman of the Legal Ethics Committee,
Virginia State Bar
4069 Chain Bridge Road
Fairfax, Virginia 22030
SUPREME COURT OF VIRGINIA
1101 East Broad Street
Richmond, Virginia 23219
HON. HAROLD S. SNEAD, individually and in his capacity
as Chief Justice of the Supreme Court of Virginia
1101 East Broad Street
Richmond, Virginia 23219

Defendants.

Civ. No. C.A. 75-0105

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND REQUEST FOR CONVENING OF THREE-JUDGE COURT

INTRODUCTION

1. This is an action seeking a declaration that defendants have violated the First and Fourteenth Amendment rights of plaintiffs and their members to gather, publish, convey and receive important factual information concerning attorneys practicing in Arlington County, Virginia, and seeking an injunction permanently enjoining the enforcement, operation, or execution by defendants or others of the provisions of DR 2-102 (A) (6) of the Codes of Professional Responsibility of the Virginia State Bar and of the American Bar Association.

THE PARTIES

2. Plaintiff Consumers Union of United States, Inc. ("Consumers Union") is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education and counsel about consumer goods and services and the management of the family income, and to advance the consumer interests of its hundreds of thousands of members, many of whom reside in Virginia and many of whom reside in this judicial district within the meaning of Rule 16(D) of this Court. Consumers Union's income is derived solely from the sale of *Consumer Reports* (magazine and TV) and other publications. In addition to reports on Consumers Union's own product testing, *Consumer Reports,* with its circulation of over 2 million, regularly carries articles on professional services, health, product safety, marketplace economics, and legislative, judicial and regulatory actions which affect consumer welfare. *Consumer Reports* plans to publish during 1975 an article on how consumers should select a lawyer. Consumers Union's publications carry no advertising and receive no commercial support.

Plaintiff Virginia Citizens Consumer Council ("VCCC") is a nonprofit, statewide consumer organization chartered

by the State of Virginia in 1967 to promote the rights of its 550 member families and of the members of its affiliated member organizations, many of whom reside in Arlington County, to educate its members concerning goods and services, and to take action consistent with the needs and interests of consumers. Many of VCCC's members reside in this judicial district within the meaning of Rule 16(D) of this Court.

3. Defendant American Bar Association ("ABA") is a voluntary unincorporated association of members of the bars of various states, including Virginia. The ABA does, transacts and solicits business in Virginia and interprets its Code of Professional Responsibility ("the ABA Code") and takes other actions which it intends to and knows will have an effect on lawyers in Virginia. On August 12, 1969, the ABA adopted, and from time to time has amended, the ABA Code which is binding upon its members and which it seeks to have adopted by the states, including Virginia, as the basis for regulating the professional and commercial conduct of all lawyers.

Defendant Virginia State Bar ("State Bar") is an association organized and existing under the laws of the State of Virginia and maintains offices and transacts business in the Eastern District of Virginia. All persons who practice law in the State of Virginia are required to become and remain members of the State Bar. One of the functions of the State Bar is to insure that all of its members act in accordance with the standards of professional conduct as codified in the Virginia Code of Professional Responsibility ("the State Bar Code"). On or about October 13, 1970, defendant Supreme Court adopted the ABA Code to be the State Bar Code, and the State Bar Code remains in almost all respects identical to the ABA Code. In order to implement the State Bar Code, which is of general, state-wide applicability, the

State Bar has established a Legal Ethics Committee. The functions of this Committee include formally advising members of the State Bar concerning the conformity or nonconformity of proposed or actual conduct by such members with the State Bar Code, as well as receiving or initiating complaints against those members of the State Bar alleged to have violated the State Bar Code and investigating and holding hearings to determine whether to invoke formal sanctions against such members, including reprimand, suspension, and disbarment from the practice of law in the State of Virginia. Defendant Dobbins is the President and chief officer of the State Bar.

Defendant Rothwell J. Lillard is a citizen of the State of Virginia and resides in the Eastern District of Virginia. He is a member of the State Bar and is chairman of the Legal Ethics Committee of the State Bar.

Defendant Supreme Court of Virginia adopted and promulgated the State Bar Code, purporting to act under the authority of § 54-48 of the Virginia Code. Defendant Harold S. Snead is the Chief Justice of the Supreme Court of Virginia.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1343(3).

THE FACTS

5. During 1974, plaintiff Consumers Union, through its legal and editorial staff, developed and prepared written materials to form the basis for a directory of all lawyers residing or practicing law in Arlington County, Virginia, to be published and distributed by plaintiffs Consumers Union and VCCC, for the purpose of assisting and educating consumers, including members of plaintiffs Consumers Union and VCCC, in the process of selecting an attorney. These

materials consist of (1) a questionnaire to be sent to all lawyers licensed to practice law in the State of Virginia who reside or maintain an office in Arlington County, designed to elicit information concerning each lawyer's office, education, legal activities, affiliations, areas of specialization, fee and billing practices, and client relations ("the Questionnaire"), and (2) an introduction to the directory which explains the manner in which the directory was prepared, guides the reader as to how to use the Questionnaire responses, and explains the limitations of the information contained therein, and which provides advice to consumers on how to select a lawyer ("the explanatory materials"). The Questionnaire and the explanatory materials are attached hereto as Exhibit A. The directory is to be a publication consisting of the explanatory materials and the responses to the Questionnaire, after verification and, if necessary, correction of the Questionnaire information by each responding attorney. The directory is to be sold and distributed at cost and the publishers will neither request nor accept any consideration from any lawyer for such listing.

6. Disciplinary Rules 2-101 and 2-102 of the State Bar Code and the ABA Code are virtually identical. Said rules of the State Bar Code provide, in pertinent part, as follows:

> (A) A lawyer shall not prepare, cause to be prepared, use, or participate in the use, of any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, "public communication" includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book.
>
> (B) A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf except as permitted under DR 2-103. This does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:
>
> (1) In political advertisements when his professional status is germane to the political campaign or to a political issue.
> (2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.
> (3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.
> (4) In and on legal documents prepared by him.
> (5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.
>
> (C) A lawyer shall not compensate or give any thing of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.
>
> DR 2-102 Professional Notices, Letterheads, Offices, and Law Lists.
>
> (A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, except that the following may be used if they are in dignified form:
>
> * * *
>
> (6) A listing in a reputable law list or legal directory giving brief biographical and other informative data. A law list or directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession.

A law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates; addresses and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates; a statement that practice is limited to one or more fields of law; a statement that the lawyer or law firm specializes in a particular field of law or law practice but only if authorized under DR 2-105 (A)(4); date and place of birth; date and place of admission to the bar of state and federal courts; schools attended, with dates of graduation, degrees, and other scholastic distinctions; public or quasi-public offices; military service; posts of honor; legal authorships; legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional associations and societies; foreign language ability; names and addresses of references, and, with their consent, names of clients regularly represented.

7. Beginning in August 1974, plaintiff Consumers Union. in order to enable it to gather, convey, publish and enable its members and VCCC's members to receive, information about lawyers residing or practicing law in Arlington County, requested that defendants ABA and State Bar review plaintiffs' proposed directory and certify it as in compliance with the ABA and State Bar Codes, as provided in Disciplinary Rule 2-102(A)(6) of such Codes. Defendant ABA informed plaintiffs that the ABA would not approve said directory because it contained information on fees, areas of specialization, and so forth. Defendant State Bar insisted that a member of the State Bar request a ruling on the matter and when Elaine Constance Major, a member of

the State Bar, requested such a ruling, the State Bar informed her, by letter dated January 17, 1975, that "DR 2-102(A)(6) makes it inappropriate for you to have your name included in the list."

8. Defendant ABA has issued certificates of compliance for, and defendant State Bar has permitted its members to list themselves in, numerous law lists and law directories which on their face violate the ABA Code and which are designed to enable lawyers to advertise their professional services to corporations, financial institutions, and other relatively wealthy potential clients, but which are of insufficient assistance to ordinary consumers seeking legal representation. In doing so, and in refusing to approve plaintiffs' directory, said defendants have acted arbitrarily, capriciously, and without rational basis, and have denied plaintiffs the equal protection of the laws.

9. Wholly as a result of the aforesaid actions by defendants, Ms. Major has refused and other lawyers in Arlington County have refused and/or will refuse to furnish to plaintiffs for inclusion in said directory information on fee practices, areas of specialization and so forth, or to be listed in or otherwise cooperate with plaintiffs in the publication of the directory, out of a present, reasonable apprehension that to furnish such information or to be listed in or cooperate with such a directory would violate Disciplinary Rule 2-102(A)(6) of the State Bar Code and could therefore subject them to disciplinary proceedings brought by the State Bar; and plaintiffs have thereby been prevented from gathering, conveying, and publishing such information on fee practices, areas of specialization, and so forth and the members of plaintiffs have been prevented from receiving such information.

VIOLATIONS OF LAW

10. Disciplinary Rule 2-102(A)(6) of the ABA Code and the State Bar Code is unconstitutional both on its face and as applied to the listing of attorneys in, and the publication of, the directory sought to be published by plaintiffs, in that said Rule has had, and will continue to have, an actual chilling effect and has constituted, and will continue to constitute, a prior restraint upon the exercise by plaintiffs and their members of their rights under the First and Fourteenth Amendments to the United States Constitution to gather, publish, convey, and receive important factual information necessary to enable such persons to secure the most effective and satisfactory legal representation.

11. The aforesaid actions by defendants have deprived, and will continue to deprive:

(a) plaintiffs and plaintiffs' members of their constitutional rights to gather, publish, convey, and receive important factual information necessary to enable such persons to secure the most effective and satisfactory legal representation, in violation of the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983; and

(b) plaintiffs and plaintiffs' members of their constitutional right to equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983;

12. Plaintiffs have been and will continue to be irreparably harmed by the aforesaid violations of law, and have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray:

(1) that this Court convene a three-judge district court pursuant to 28 U.S.C. § 2281 and 2284;

(2) that this Court enter a judgment declaring that Disciplinary Rule 2-102(A)(6) of the ABA Code and the State Bar Code is unconstitutional both on its face and as applied by defendants to restrict the gathering of information for the listing of attorneys in, and the publication of, the directory sought to be published by plaintiffs, for violation of the First and Fourteenth Amendments to the United States Constitution, and that defendants have therefore violated said Amendments and 42 U.S.C. § 1983;

(3) that this Court issue a permanent injunction restraining and prohibiting the enforcement, operation, or execution of Disciplinary Rule 2-102(A)(6) by defendants or others;

(4) that this Court grant plaintiffs reasonable counsel fees, as well as the costs and disbursements of this action; and

(5) that this Court grant such other and further relief as may be just and proper.

Respectfully submitted,

JAMES W. BENTON, JR.
HILL, TUCKER & MARSH
214 East Clay Street
P. O. Box 27363
Richmond, Virginia 23261
804/648-9073
PETER H. SCHUCK
1714 Massachusetts Avenue, N.W.
Washington, D.C. 20036
202/785-1906
(Member of the District of Columbia Bar)
Counsel for Plaintiffs

Dated: February . ., 1975

THE RULE CHALLENGED BY CONSUMERS UNION (DR 2-102(A)(6))

The challenged rule of the Supreme court of Virginia is set forth in the complaint, *supra,* at 25-26.

THE RULE AS AMENDED BY THE AMERICAN BAR ASSOCIATION IN FEBRUARY 1976

(A) A lawyer or law firm shall not use or participate in the use of professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, except that the following may be used if they are in dignified form:

A listing in a reputable law list, legal directory, a directory published by a state, county or local bar association, or the classified section of telephone company directories giving brief biographical and other informative data. A law list or any directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession. A law list or any directory is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates; addresses and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates; a statement that practice is limited to one or more fields of law; a statement that the lawyer or law firm specializes in a particular field of law or law practice, to the extent permitted by the authority having jurisdiction under state law over the subject and in accordance with rules prescribed by that authority; date and place of birth; date and place of admission to the bar of state and federal courts; schools at-

tended, with dates of graduation, degrees, and other scholastic distinctions; public or quasi-public offices; military service, posts of honor, legal authorships; legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional licenses; memberships in scientific, technical and professional associations and societies; foreign language ability; names and addresses of references, and, with their consent, names of clients regularly represented; whether credit cards or other credit arrangements are accepted; office and other hours of availability; a statement of legal fees for an initial consultation or the availability upon request of a written schedule of fees or an estimate of the fee to be charged for the specific services; provided, all such published data shall be disseminated only to the extent and in such format and language uniformly applicable to all lawyers, as prescribed by the authority having jurisdiction by state law over the subject.

PROPOSED AMENDMENTS TO VIRGINIA CODE OF PROFESSIONAL RESPONSIBILITY

April 1, 1976

Amend DR 2-102 (A) (5) and DR 2-102 (A) (6) as follows (additions are *underscored,* deletions appear in parenthesis):

(A) A lawyer or law firm shall not use *or participate in the use of* professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, except that the following may be used if they are in dignified form:

* * *

(5) A listing of the office of a lawyer or law firm in the alphabetical and classified sections of the telephone directory or directories for the geographical area or areas in which the lawyer resides or maintains offices or in which a significant part of his clientele resides and in the city directory of the city in which his or the firm's office is located; but the listing *in the alphabetical section* may give only the name of the lawyer or law firm, the fact he is a lawyer, addresses, and telephone numbers, *and the listing in the classified section must comply with the provisions of DR 2-102 (a) (6).* The listing shall not be in distinctive form or type. A law firm may have a listing in the firm name separate from that of its members and associates. The listing in the classified section shall not be under a heading or classification other than "Attorneys" or Lawyers," except that additional headings or classifications descriptive of the types of practice referred to in DR 2-105 are permitted.

(6) A listing in a reputable law list, (or) legal directory, *a directory published by a state, county or local bar association, or the classified section of*

telephone company directories giving brief biographical and other informative data. A law list or *any* directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession. A law list *or any directory* is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates; addresses and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates (;), a statement that practice is limited to one or more fields of law (;), *or* a statement that the lawyer or law firm specializes in a particular field or law practice, *to the extent permitted and in accordance with rules prescribed by the Supreme Court of Virginia;* (but only if authorized under DR 2-105 (A) (4);) date and place of birth; date and place of admission to the bar of state and federal courts; schools attended, with dates of graduation, degrees, and other scholastic distinctions; public or quasi-public offices; military service; posts of honor; legal authorships; legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional licenses; memberships in scientific, technical and professional associations and societies; foreign language ability; names and addresses of references and, with their consent, names of clients regularly represented: *whether credit arrangements are accepted; office and other hours of availability; a statement of legal fees, if any, for an initial consultation and the availability upon request after consultation of an estimate of the fee to be charged for the specific services.*

ORDER OF SUPREME COURT OF VIRGINIA

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 20th day of April, 1976.

In the Matter of

Petition by the Council of the Virginia State Bar to amend DR 2-102 (A) (5) and DR 2-102 (A) (6) of the Rules of the Supreme Court of Virginia, Part Six, Section II.

On April 6, 1976, came the Virginia State Bar Council, by Philip M. Sadler, President of the Virginia State Bar, and filed a petition praying that the Court amend the Virginia Code of Professional Responsibility as fully set out in said petition.

And the Court having maturely considered the said petition, is of opinion that the proposed amendments to Rules DR 2-102 (A) (5) and DR 2-102 (A) (6) of the Rules of the Supreme Court of Virginia, Part Six, Section II, will not serve the best interests of the public or the legal profession, and therefore the petition for the amendments is denied.

A Copy, Teste:

H. TURNER, Clerk

DRAFT ORDER SUBMITTED BY DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

CONSUMER UNION OF UNITED STATES, INC., *et al.*,
Plaintiffs,

v.

AMERICAN BAR ASSOCIATION, et al.,
Defendants.

Civil Action No. 75-0105-R

MEMORANDUM AND ORDER

On June 29, 1977, the U.S. Supreme Court vacated the judgment of this Court in the above-captioned case and remanded the case to this Court for further consideration in the light of *Bates* v. *State Bar of Arizona,* 433 U.S. 350 (1977). Having reconsidered this matter as ordered by the Supreme Court, Judges Bryan, Merhige and Warriner unanimously adopt and reconfirm the Court's previous order in this case, except insofar as that order did not permit publication by the plaintiffs of certain information as to the fees charged by members of the Bar of Virginia for services.

In light of the decision of the Supreme Court in *Bates, supra,* the Court holds that, pursuant to the First and Fourteenth Amendments, plaintiffs are entitled to gather and publish, and their members are entitled to receive, truthful information as to the fees at which lawyers will perform routine legal services, so long as the information

published is not false, misleading or deceptive. It is therefore now

ADJUDGED AND ORDERED that the prayers of the complaint, as amended, as to the State defendants, be and they are hereby granted; that accordingly the publication described in Appendix A to the affidavit of Mark Silbergeld, dated May 12, 1978, is approved by the Court, and hereby is declared to be valid for publication; and, to that extent, defendants, their successors in office, their agents and attorneys, be and they are hereby, permanently enjoined and restrained from enforcement of rules and regulations issued by defendants, insofar as such rules and regulations prohibit lawyers practicing in the Commonwealth of Virginia from providing such information to plaintiffs for publication.

Let the Clerk send copies of this Memorandum and Order to all counsel of record.

Done this .. day of ....., 1978, at Richmond, Virginia.

United States District Judge

United States District Judge

United States District Judge

DRAFT ORDER SUBMITTED BY PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

CONSUMERS UNION OF UNITED STATES, INC., *et al.*,

Plaintiffs,

v.

AMERICAN BAR ASSOCIATION,

Defendants.

Civil Action No. 75-0105-R

ORDER

On June 29, 1977, the U.S. Supreme Court vacated the judgment of this Court in the above-captioned case and remanded the case to this Court for further consideration in the light of *Bates* v. *State Bar of Arizona,* 433 U.S. 350 (1977). Having reconsidered this matter as ordered by the Supreme Court, Judges Bryan, Merhige and Warriner unanimously adopt and reconfirm the Court's previous order and findings in this case, except that portion of the Order and findings which prohibited the publication of information relating to prices charged by lawyers.

In light of the decision of the Supreme Court in *Bates, supra,* the Court finds that, pursuant to the First and Fourteenth Amendments, plaintiffs are entitled to gather and publish, and their members are entitled to receive, information on the fees at which lawyers will perform routine

legal services and other fee information, so long as the information is not false, deceptive or misleading.

The Court having received the directory proposed to be published by plaintiffs finds that the proposed directory will not mislead the readers.

It is therefore now DECLARED THAT:

(1) Disciplinary Rule 2-102(A)(6) of the Virginia Code of Professional Responsibility violates the First and Fourteenth Amendments of the U.S. Constitution and defendants Virginia State Bar and Virginia Supreme Court therefore have violated said Amendments and 42 U.S.C. Section 1983;

(2) Any provisions of the Virginia Code of Professional Responsibility that prohibits, or has a chilling effect upon, the gathering, publication, or receipt of a law list or directory because it contains the types of information about attorneys contained in plaintiffs' Memorandum in Support of Plaintiffs' Motion for Judgment on the Merits, is in violation of said Amendments and 42 U.S.C. Section 1983.

It therefore is now ORDERED AND ADJUDGED that:

(1)(a) the Virginia State Bar and the Virginia Supreme Court, their officers, successors in office, agents, servants, employees and attorneys are enjoined from directly or indirectly promulgating, interpreting, administering, maintaining, or enforcing against plaintiffs or others Disciplinary Rule 2-102(A)(6) or any other provision of the Virginia Code of Professional Responsibility that prohibits, or has a chilling effect upon, the gathering, publication, or receipt of a law list on the ground that it contains the types of information about attorneys contained in plaintiffs' proposed revised directory.

(b) Defendant Virginia State Bar (1) within thirty (30) days of the date hereof shall issue to plaintiffs an official certificate stating that plaintiffs' proposed directory

is in compliance with all lawful provisions of the Virginia Code of Professional Responsibility, and (2) in its next official mailing to members of the Virginia State Bar shall include an official notice to the effect that Disciplinary Rule 2-102(A)(6) of the Virginia Code of Professional Responsibility has been declared unconstitutional by this Court and that members of the Virginia State Bar may not be disciplined for being listed in plaintiffs' proposed directory, so long as the information furnished by them does not violate any lawful provisions of said Code.

Let the Clerk send copies of this Order to all counsel of record.

Done this .. day of ....., 1978, at Richmond, Virginia.

United States District Judge

United States District Judge

United States District Judge